

M-10-933

JP:DS:EW

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- - - - -X

UNITED STATES OF AMERICA

- against -

MARLA AHLGRIMM and
BALBIR BHOGAL,

Defendants.

- - - - -X

EASTERN DISTRICT OF NEW YORK, SS:

James J. Cunningham, Jr., being duly sworn, deposes and says that he is a Special Agent with the Federal Bureau of Investigation ("FBI"), duly appointed according to law and acting as such.

In or about and between January 2008 and May 2010, both dates being approximate and inclusive, within the Eastern District of New York and elsewhere, the defendants MARLA AHLGRIMM and BALBIR BHOGAL, together with others: (i) did knowingly and intentionally conspire to intentionally traffic and attempt to traffic in goods and to knowingly use a counterfeit mark on and in connection with such goods, knowing that a counterfeit mark had been applied thereto, the use of which was likely to cause mistake and to deceive, in violation of Title 18, United States

SUBMITTED UNDER SEAL

COMPLAINT & AFFIDAVIT
IN SUPPORT OF
ARREST WARRANTS

(18 U.S.C. § 371;
21 U.S.C. § 846)

Code, Section 2320;¹ (ii) did knowingly and intentionally conspire to introduce and deliver for introduction into interstate commerce, with intent to defraud and mislead, drugs that were misbranded, in violation of Title 21, United States

¹ Title 18, United States Code, Section 2320 provides, in pertinent part, that:

whoever intentionally traffics or attempts to traffic in goods ... an knowingly uses a counterfeit mark on or in connection with such goods ... the use of which is likely to cause confusion, to cause mistake, or to deceive [shall be guilty of a crime].

18 U.S.C. § 2320(a).

The term "counterfeit mark" is defined as:

a spurious mark-

(i) that is used in connection with trafficking in any goods ...;

(ii) that is identical with, or substantially indistinguishable from, a mark registered on the principal register in the United States Patent and Trademark Office and in use, whether or not the defendant knew such mark was so registered;

(iii) that is applied to or used in connection with the goods ... for which the mark is registered with the United States Patent and Trademark Office ...; and

(iv) the use of which is likely to cause confusion, to cause mistake, or to deceive ...

18 U.S.C. § 2320(e)(1)(A).

Code, Sections 331(a) and 333(a)(2);² and (iii) did knowingly and

² The prohibition on distributing "misbranded drugs" is contained in Title 21, United States Code, Section 331, which criminalizes:

"The introduction or delivery for introduction into interstate commerce of any food, drug, device, or cosmetic that is adulterated or misbranded."

21 U.S.C. § 331(a). One committing such an offense with the "intent to defraud or mislead" is guilty of a felony. 21 U.S.C. § 333(a)(2). A drug is misbranded if, among other things,

"its labeling is false or misleading in any particular,"

21 U.S.C. § 352(a),

"[i]f in package form unless it bears a label containing (1) the name and place of business of the manufacturer, packer, or distributor; and (2) an accurate statement of the quantity of the contents in terms of weight, measure, or numerical count,"

21 U.S.C. § 352(b), or, if it is a prescription drug, it is dispensed without the required prescription. A prescription drug:

"shall be dispensed only (i) upon a written prescription of a practitioner licensed by law to administer such drug, or (ii) upon an oral prescription of such practitioner which is reduced promptly to writing and filed by the pharmacist, or (iii) by refilling any such written or oral prescription if such refilling is authorized by the prescriber either in the original prescription or by oral order which is reduced promptly to writing and filed by the pharmacist. The act of dispensing a drug contrary to the provisions of this paragraph shall be deemed

intentionally conspire to distribute and possess with intent to distribute controlled substances, to wit, Oxycodone, a Class II controlled substance, Hydrocodone, a Class III controlled substance, and Alprazolam and Phentermine, Class IV controlled substances.

(Title 18, United States Code, Section 371, and Title 21 United States Code, Section 846)

The source of your deponent's information and the grounds for his belief are as follows:³/

1. I am a Special Agent with the Federal Bureau of Investigation ("FBI") and have been so employed since 2005. I also served as a law enforcement officer in the State of Massachusetts for approximately one year prior to my employment with the FBI. Since becoming a Special Agent with the FBI, I have participated in numerous investigations of trademark counterfeiting, a violation of Title 18, United States Code, Section 2320, distribution of misbranded drugs, a violation of Title 21, United States Code, Section 331(a), and distribution of

to be an act which results in the drug being misbranded while held for sale."

21 U.S.C. § 353(b)(1).

³ Because the purpose of this affidavit is to set forth only those facts necessary to establish probable cause, I have not set forth every fact and circumstance of which I am aware.

controlled substances, a violation of Title 21, United States Code, Section 841(a). I have conducted or participated in physical surveillance, the introduction of undercover agents and confidential informants, the execution of search warrants, debriefings of informants and other witnesses, and reviews of taped conversations, videos and financial records. Through my training, education and experience, I have become familiar with the manner in which misbranded and counterfeited drugs and controlled substances are transported, stored, and sold, the methods of payments for such goods, and how the proceeds from the sale of misbranded and counterfeited drugs and controlled substances are maintained. The information in this affidavit is based upon knowledge gained from my own involvement in a joint investigation by the FBI, Immigration & Customs Enforcement ("ICE") and the Food and Drug Administration Office of Criminal Investigations ("FDA/OCI"), upon conversations with other law enforcement officers, and upon my review of records collected in the investigation.

I. MARLA AHLGRIMM and Women's Health America

2. MARLA AHLGRIMM is the founder and Chief Executive Officer of "Women's Health America" ("WHA"), a company incorporated in Wisconsin with its headquarters at 1289 Deming Way in Madison, Wisconsin. Her photograph is featured

prominently on its website, located at "<http://womenshealth.com/patient>." According to WHA's website, its mission since MARLA AHLGRIMM founded it in 1980 has been to provide "hormone balance" for its female patients. Apparently part of WHA, and listed at the bottom of its home page, are (i) "Madison Pharmacy Associates, LLC" ("Madison"), which is licensed by the Drug Enforcement Administration ("DEA") as a retail pharmacy and has been licensed by at least sixteen states variously as a pharmacy, mail order pharmacy and even as an optometrist, and (ii) "Cyclin Pharmaceuticals, Inc." ("Cyclin"), which is licensed by the DEA as a distributor of Class III, IV and V controlled substances.

3. MARLA AHLGRIMM is also both a signator for, and listed as president of, CP International, LLC ("CPI"), which has a checking and money market account at Associated Bank, NA in Green Bay, Wisconsin, and lists its address as 1289 Deming Way in Madison. I have located no additional corporate information for CPI, and it is not listed on the WHA website.

4. None of these entities - WHA, Madison, Cyclin or CPI - holds a DEA importer's license.

II. BALBIR BHOGAL & NUTRAGEN, LLC

5. BALBIR BHOGAL is the registered agent for "Nutragen, LLC" ("Nutragen"), also of Madison, Wisconsin, which according to the Wisconsin Department of Financial Institutions is an active limited liability company. There is little other

public source information about Nutragen except a "Linked In" profile (<http://www.linkedin.com/pub/balbir-bbhogal/15/401/841>) which lists "Balbir Bhogal [sic]" as "CEO and Director" and his experience as "Pharmaceuticals Industry." Nutragen does not hold a DEA importer's license. A background check of publicly available sources confirms that a "Balbir Singh Bhogal" who formerly resided at the registered agent's address for Nutragen still lives in Madison.

III. AHLGRIMM's and BHOGAL's Sales of Imported Controlled Substances

6. I am informed by a confidential source ("CS 1") that from approximately February 2008 through May 2009, CS 1, who was running an internet pharmacy at that time, purchased millions of tablets of imported Alprazolam⁴ and Phentermine,⁵ both Class IV controlled substances, from MARLA AHLGRIMM and BALBIR BHOGAL.

⁴ According to Drugs.Com, an on-line prescription drug information service, "Alprazolam is in a group of drugs called benzodiazepines. It works by slowing down the movement of chemicals in the brain that may become unbalanced. This results in a reduction in nervous tension (anxiety). Alprazolam is used to treat anxiety disorders, panic disorders, and anxiety caused by depression." Alprazolam is a prescription drug and a Schedule IV controlled substance. See 21 C.F.R. § 1308.14.

⁵ According to Drugs.Com, "Phentermine is a stimulant that is similar to an amphetamine. It is an appetite suppressant that affects the central nervous system. Phentermine is used together with diet, exercise and behavioral modification to treat obesity (excessively overweight) in people with risk factors such as high blood pressure, high cholesterol, or diabetes." Phentermine is a prescription drug and a Schedule IV controlled substance. See 21 C.F.R. § 1308.14.

CS 1 placed these orders with MARLA AHLGRIMM by electronic mail, corresponding with her at "mahlgrimm@womenshealth.com," and by telephone.

7. MARLA AHLGRIMM specifically told CS 1 - (i) who is not a pharmacist or physician, (ii) has never held any DEA controlled substances licenses, and (iii) could not legally purchase from approved U.S. manufacturers the vast amounts of prescription drugs necessary to supply CI 1's business - that she could obtain drugs for CS 1 from an Indian manufacturer and have them shipped directly to the United States. MARLA AHLGRIMM told CS 1 that BALBIR BHOGAL, who is of Indian descent, had connections with several manufacturing facilities in India. MARLA AHLGRIMM e-mailed CS 1 a copy of the Indian drug manufacturing license for one of her purported suppliers. When CS 1's U.S. reshipper received the drugs, they came via EMS/Speedpost ("Expedited Mail Services") directly from India. To corroborate this, I have reviewed e-mail messages from MARLA AHLGRIMM enclosing the license and confirming receipt by the reshipper. I have also reviewed e-mail messages from the reshipper to CS 1 enclosing, among other things, photographs of the packages from India, which show the tablets shipped in loose form, some of the broken, without labels identifying their foreign origin, contents or manufacturer.

8. CS 1 says that MARLA AHLGRIMM asked CS 1 to wire payments for the drugs both to the CPI account at Associated Bank NA and to BALBIR BHOGAL at an account at Standard and Chartered Bank in Hyderabad, India. To corroborate this, I have reviewed e-mail messages in which MARLA AHLGRIMM provides the account numbers, swift codes and other identifying information for the accounts. In one message, for instance, she directs that 1/3 of the payment go to the CPI account and 2/3s to BALBIR BHOGAL's account in India. I have also reviewed records from Associated Bank NA which show wire transfers to the CPI account from two of the shell companies which CS 1 has admitted using.

IV. BALBIR BHOGAL's Sales of Controlled Substances and Counterfeit Prescription Drugs - from WHA & Elsewhere

9. I am informed by a second confidential source ("CS 2") that in the Spring of 2010 CS 2 ordered from BALBIR BHOGAL controlled substances, including Oxycodone,⁶ a Schedule II controlled substance, and Hydrocodone,⁷ a Schedule III controlled

⁶ According to Drugs.com, "Oxycodone is in a group of drugs called narcotic pain relievers. Acetaminophen is a less potent pain reliever that increases the effects of Hydrocodone. The combination of acetaminophen and oxycodone is used to relieve moderate to severe pain." Oxycodone is a prescription drug and a Schedule II controlled substance. See 21 C.F.R. § 1308.12.

⁷ According to Drugs.com, "Hydrocodone is in a group of drugs called narcotic pain relievers. Acetaminophen is a less potent pain reliever that increases the effects of hydrocodone. The combination of hydrocodone and acetaminophen is used to relieve moderate to severe pain." Hydrocodone is a prescription drug and both a Schedule II and a Schedule III controlled substance, depending on the form - generally, prescription Hydrocodone falls

substance, as well as prescription drugs, including Viagra®.⁸ BALBIR BHOGAL apparently offered CS 2 both "Pfizer Viagra" and "generic Viagra," even though generic Viagra® is not legally available in the United States, where Pfizer®, its manufacturer, still holds an exclusive patent. CS 2 communicated with BALBIR BHOGAL by telephone and e-mail.

10. CS 2 communicated with BALBIR BHOGAL by e-mail at the address "dr_bhogal@yahoo.com." I have obtained subscriber and login information for that account during the period when CS 2 was corresponding with BALBIR BHOGAL, and have traced three of the internet protocol ("IP") addresses from which BALBIR BHOGAL was logging into the account: (i) one assigned to a subscriber who was living at the same address BALBIR BHOGAL used as

under Schedule III. See 21 C.F.R. §§ 1308.12-13.

⁸ Viagra® is a prescription drug produced by the pharmaceutical company Pfizer® which is used to treat erectile dysfunction and pulmonary arterial hypertension. The corporate name "Pfizer" (Reg. #2951026), the drug name "Viagra" (Reg. #2162548), the Pfizer® corporate logotype (below) and the unique appearance of Viagra tablets (diamond-shaped, combined with the color blue, pictured below) are all trademarks registered on the principal register of the United States Trademark and Patent Office ("USPTO").



Reg. #626088



Reg. #2593407

registered agent for NUTRAGEN; (ii) one in India; and (iii) one assigned to "Womenshealth2.colorado.supra.net" in Madison, Wisconsin. I have also run a law enforcement background check⁹ for BALBIR BHOGAL which confirms that he did reside for a time at the physical address to which the first Madison IP address (the non Women's Health one) was assigned and which he used as a registered agent for Nutragen. The background check also revealed his current address and confirmed his pedigree, such as date of birth and social security number.

11. In the e-mail correspondence, which I have since had a chance to review, BALBIR BHOGAL listed the drugs he could provide,¹⁰ including those above, and their prices. BALBIR

⁹ Known as a "National Comprehensive Report, this collects data from publicly available database but provides more information, such as complete dates of birth and social security numbers, than non law-enforcement authorities may obtain.

¹⁰ In addition to those listed in ¶ 9, BALBIR BHOGAL wrote that he could provide Diazepam and Cialis®.

Diazepam, according to Drugs.Com, "is a benzodiazepine. It affects chemicals in the brain that may become unbalanced and cause anxiety. Diazepam is used for the management of anxiety disorders or for the short-term relief of symptoms of anxiety." Diazepam is prescription drug and a Schedule IV controlled substance. See 21 C.F.R. § 1308.14.

Cialis® is a prescription drug produced by the pharmaceutical company Eli Lilly and Company® and its biotech subsidiary ICOS, which is used to treat erectile dysfunction and pulmonary arterial hypertension. The corporate name "Eli Lilly and Company" (Reg. #0113361), the drug name "Cialis" (Reg. #2724589), the Eli Lilly & Company® and ICOS corporate logotypes (below), the Cialis® logotype (below) and the unique appearance

BHOGAL instructed CS 2 to wire money to an account in his name at Wells Fargo Bank in Madison, Wisconsin.

12. Law enforcement authorities intercepted five of the packages which BALBIR BHOGAL sent to CS 2 in fulfillment of CS 2's order.

13. Two of the packages, which came from India, contained a total of approximately 1,732 tablets which were white, oblong in shape and embossed "10/325," a designation which appears on genuine Oxycodone tablets, and stands for 10 milligrams Oxycodone, 325 milligrams Acetaminophen. The tablets were loose in the package, not bottled, and not labeled in any fashion. Testing by the FDA revealed that these tablets actually contained no Oxycodone.

of Cialis tablets (egg-shaped, gold and embossed with the letter "C," pictured below) are all trademarks registered on the principal register of the USPTO.



Reg. #2833221



Reg. #1318867

icòs

Reg. #3109223



Reg. #2833222

14. A third package, which came from "CPHARMAIN"¹¹ at 3286 Deming Way in Madison (just a few doors from WHA), contained 1,121 tablets of purported generic Viagra®. Apparently designed to resemble Viagra®, they were blue and diamond-shaped, infringing upon two of the design trademarks registered by Pfizer®. See n.8, supra. The tablets were loose in the package, not bottled, and not labeled in any fashion. Testing by the FDA revealed that these tablets did not contain the same levels of sildenafil, the active ingredient in Viagra®, as the Pfizer® product.

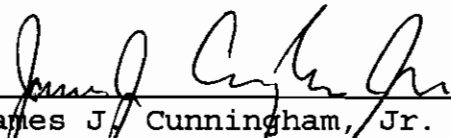
15. A fourth package, which came from "CYCLIN PHARMA" at 1289 Deming Way in Madison (the same address as WHA and Cyclin Pharmaceuticals, both run by MARLA AHLGRIMM), contained 2,048 tablets, also of purported generic Viagra®. Again, apparently designed to resemble Viagra®, they were blue and diamond-shaped, infringing upon two of the design trademarks registered by Pfizer®. See n.8, supra. The tablets were loose in the package, not bottled, and not labeled in any fashion. As with the CPHARMAIN package, testing by the FDA revealed that these tablets did not contain the same levels of sildenafil, the active ingredient in Viagra®, as the Pfizer® product.

¹¹ As part of my investigation, I have learned that the e-mail account "cpharmain@aol.com" is subscribed to by BALBIR BHOGAL, although though he did not use it to correspond with CS 2.

16. A fifth package, which came from China via EMS/Speedpost, contained 2,043 tablets of purported "Pfizer Viagra." Designed to look like actual Viagra®, they were blue, diamond-shaped, with the Pfizer® logo on one side and the notation "VGR 100," a reference to the concentration of the active ingredient, on the other. Testing by the FDA revealed that these tablets were not actual Viagra®.

17. Finally, notably, in telephone conversations with CS 2, BALBIR BHOGAL talked about "Marla," by which, I believe, he meant MARLA AHLGRIMM, and indicated that she was still there, by which, I believe, he meant Madison, and, more specifically, WHA - in light of the myriad other connections set forth above between BALBIR BHOGAL and MARLA AHLGRIMM.

WHEREFORE, I respectfully request that the Court issue a warrant for the arrest of the defendants MARLA AHLGRIMM and BALBIR BHOGAL so that they may be dealt with according to law. Because this investigation is ongoing, I respectfully request that this affidavit be ordered filed under seal.



James J. Cunningham, Jr.
Special Agent
Federal Bureau of Investigation

Sworn to before me this
August 12, 2010.

TH:
UN:
EA:

REYES, JR.
TE JUDGE
N YORK